U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

DATE ISSUED April 28, 1989

CASE NO. 88-INA-186

IN THE MATTER OF THE APPLICATION
FOR AN ALIEN EMPLOYMENT CERTIFI-
CATION UNDER THE IMMIGRATION AND
NATIONALITY ACT

ADRY-MART, INC.
Employer

on behalf of

RIGOBERTO BEJARANO-APARICIO
Alien

Rebecca L. Holt, Esq.
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; Brenner, Guill, Tureck, and Williams, Administrative Law Judges

NAHUM LITT
Chief Judge

DECISION AND ORDER

This case arose from an application for labor certification submitted by the Employer on behalf of the Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14). The Certifying Officer (CO) of the U.S. Department of Labor denied the application, and the Employer requested administrative-judicial review pursuant to 20 C.F.R. §656.26 (1988).[1]

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that there are not sufficient workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the

[1] All regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

alien is to perform such labor, and that the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must apply for labor certification pursuant to §656.21. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in the Appeal File (A1-A251), and any written arguments of the parties. See §656.27(c).

Discussion and Conclusion

The Employer filed an application for alien employment certification to enable the Alien to fill the position of warehouse supervisor. At the same time, the Employer also filed an application on behalf of another alien, Jose Torres. The Employer conducted recruitment efforts to fill both positions. The CO has recognized that the same recruitment was conducted for both applications. (A97).

With regard the Employer's application on behalf of Jose Torres, in In Re Adry-Mart, Inc., 88 INA 243 (Feb. 1, 1989), the Board held that the CO improperly denied certification. A copy of the above-mentioned decision is attached hereto. With regard to the Employer's application on behalf of Rigoberto Bejarano-Aparicio, for the reasons stated in the above-mentioned decision, we also hold that the CO improperly denied certification.

ORDER

The Final Determination of the Certifying Officer denying labor certification is hereby REVERSED, and certification is GRANTED.

NAHUM LITT
Chief Administrative Law Judge

NL:WB